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08/466,607

SERIAL NUMBER	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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08/466,607 06/06/95 WHITESIDE

EXAMINER

SNOW, B

ART UNIT	PAPER NUMBER
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6

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33M1/0426

3308
DATE MAILED:

This is a communication from the examiner in charge of your application.
COMMISSIONER OF PATENTS AND TRADEMARKS

04/26/96

☐ This application has been examined ☒ Responsive to communication filed on 1/16/95 ☒ This action is made final.

A shortened statutory period for response to this action is set to expire 3 month(s), _____ days from the date of this letter.
Failure to respond within the period for response will cause the application to become abandoned. 35 U.S.C. 133

Part I THE FOLLOWING ATTACHMENT(S) ARE PART OF THIS ACTION:

- | | |
|-----------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------|
| 1. <input checked="" type="checkbox"/> Notice of References Cited by Examiner, PTO-892. | 2. <input type="checkbox"/> Notice of Draftsman's Patent Drawing Review, PTO-948. |
| 3. <input type="checkbox"/> Notice of Art Cited by Applicant, PTO-1449. | 4. <input type="checkbox"/> Notice of Informal Patent Application, PTO-152. |
| 5. <input type="checkbox"/> Information on How to Effect Drawing Changes, PTO-1474. | 6. <input type="checkbox"/> _____ |

Part II SUMMARY OF ACTION

1. ☒ Claims 1-15 are pending in the application.
Of the above, claims _____ are withdrawn from consideration.
2. ☐ Claims _____ have been cancelled.
3. ☐ Claims _____ are allowed.
4. ☒ Claims 1-15 are rejected.
5. ☐ Claims _____ are objected to.
6. ☐ Claims _____ are subject to restriction or election requirement.
7. ☐ This application has been filed with informal drawings under 37 C.F.R. 1.85 which are acceptable for examination purposes.
8. ☐ Formal drawings are required in response to this Office action.
9. ☐ The corrected or substitute drawings have been received on _____. Under 37 C.F.R. 1.84 these drawings are ☐ acceptable; ☐ not acceptable (see explanation or Notice of Draftsman's Patent Drawing Review, PTO-948).
10. ☐ The proposed additional or substitute sheet(s) of drawings, filed on _____, has (have) been ☐ approved by the examiner; ☐ disapproved by the examiner (see explanation).
11. ☐ The proposed drawing correction, filed _____, has been ☐ approved; ☐ disapproved (see explanation).
12. ☐ Acknowledgement is made of the claim for priority under 35 U.S.C. 119. The certified copy has ☐ been received ☐ not been received ☐ been filed in parent application, serial no. _____; filed on _____.
13. ☐ Since this application appears to be in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under Ex parte Quayle, 1935 C.D. 11; 453 O.G. 213.
14. ☐ Other

EXAMINER'S ACTION

35 U.S.C. § 112, FIRST PARAGRAPH

The following is a quotation of the first paragraph of 35 U.S.C. § 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

The specification is objected to under 35 U.S.C. § 112, first paragraph, as failing to provide an adequate written description of the invention. The specification fails to describe a **relatively flat** surface for receiving the said at least one ridge (claims 4 and 15).

Claims 4-7 and 15 are rejected under 35 U.S.C. § 112, first paragraph, for the reasons set forth in the objection to the specification.

35 U.S.C. § 112, SECOND PARAGRAPH

Claim 4-7, 10, and 15 are rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In regards to claims 4 and 15, "relatively flat surface" is incorrect describing an annular surface.

In regards to claim 10, "protruding lips" is indefinite.

35 U.S.C. § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. § 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

35 U.S.C. § 103

The following is a quotation of 35 U.S.C. § 103 which forms the basis for all obviousness rejections set forth in this Office action:

A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Subject matter developed by another person, which qualifies as prior art only under subsection (f) or (g) of section 102 of this title, shall not preclude patentability under this section where the subject matter and the claimed invention were, at the time the invention was made, owned by the same person or subject to an obligation of assignment to the same person.

Claims 1-8, 11, and 13-14 are rejected under 35 U.S.C.

§ 102(b) as anticipated by or, in the alternative, under 35 U.S.C. § 103 as obvious over Adrey et al (5,021,062). Annular

ridge 26 snaps into cooperating groove 25 interlocking the shell and liner inherently sealing and restricting migration of foreign material between said shell and liner.

In regards to claim 5, see element 25.

In regards to claim 8, see figures 4 and 5.

In regards to claim 11, see elements 7 and 17.

Claims 1-4, 8-11, and 13-14 are rejected under 35 U.S.C. § 102(e) as anticipated by or, in the alternative, under 35 U.S.C. § 103 as obvious over Mikhail (5,480,448). Element 34 or 134 provide a "snap fit" interlocking of the shell and the liner inherently sealing and restricting migration of foreign material between the said shell and liner.

In regards to claim 8, see figures 8-12, elements 129 and 135.

In regard to claims 9 and 10, note element 129 has tapered sides or "lips"; see applicant's specification page 11, line 10.

Claim 13-15 are rejected under 35 U.S.C. § 103 as being unpatentable over Zweymuller (EP 245527) in view of Muller et al (4,936,861).

Zweymuller discloses the invention substantially as claimed. Zweymuller discloses an acetabular component comprising a shell and liner having element 5-6 and 7-9 that provide a "snap fit" interlocking of the shell and the liner inherently sealing and

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restricting migration of foreign material between the two. However, Zweymuller is silent in regards to the shell having screw holes. Muller et al teaches the use of screw holes on an acetabular shell. It would have been obvious to one having ordinary skill in the art to have utilized the screw hole of Muller et al with the acetabular component of Zweymuller for a means of better anchoring the shell to the bone.

Claims 1 and 11-12 are rejected under 35 U.S.C. § 103 as being unpatentable over Tronzo (4,681,589) in view of Muller et al (4,936,861).

Tronzo discloses the invention substantially as claimed. Tronzo discloses a prosthesis comprising a shell and liner having sealing elements 48 and 52 and interlocking elements 50 and 54. However, Tronzo is silent in regards to the shell having screw holes. Muller et al teaches the use of screw holes on an acetabular shell. It would have been obvious to one having ordinary skill in the art to have utilized the screw hole of Muller et al with the prosthesis of Tronzo for a means of better anchoring the shell to the bone.

RESPONSE TO APPLICANT'S ARGUMENTS

Applicant's arguments filed January 16, 1996 have been fully considered but they are not deemed to be persuasive.

The use of screw holes to secure an acetabular shell to bone is well known in the art as taught by Adrey et al, Mikhail, and Muller et al.

The "snap fit" interlocking elements of Adrey et al, Mikhail, and Muller et al, lock the shell and the liner securely together inherently providing a seal that restricts migration of foreign material between said shell and liner. Applicant's seal element is constructed as an annular ridge integral with the liner like those of Adrey et al, Mikhail, and Muller et al fulfilling the structural claim language and intended functional language.

Applicant's remarks have been reviewed but are believed to be adequately addressed in grounds of rejection above.

The further limitation of "having screw holes" added to claims 1 and 13 necessitated new grounds of rejection.

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 C.F.R. § 1.136(a).

A SHORTENED STATUTORY PERIOD FOR RESPONSE TO THIS FINAL ACTION IS SET TO EXPIRE THREE MONTHS FROM THE DATE OF THIS ACTION. IN THE EVENT A FIRST RESPONSE IS FILED WITHIN TWO MONTHS OF THE MAILING DATE OF THIS FINAL ACTION AND THE ADVISORY ACTION IS NOT MAILED UNTIL AFTER THE END OF THE THREE-MONTH SHORTENED STATUTORY PERIOD, THEN THE SHORTENED STATUTORY PERIOD WILL EXPIRE ON THE DATE THE ADVISORY ACTION IS MAILED, AND ANY EXTENSION FEE PURSUANT TO 37 C.F.R. § 1.136(a) WILL BE CALCULATED FROM THE MAILING DATE OF THE ADVISORY ACTION. IN NO EVENT WILL THE STATUTORY PERIOD FOR RESPONSE EXPIRE LATER THAN SIX MONTHS FROM THE DATE OF THIS FINAL ACTION.


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Any inquiry concerning this communication should be directed to Bruce Snow whose telephone number is (703) 308-3255.



B. Snow
April 19, 1996



JOHN G. WEISS
PRIMARY EXAMINER
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